

**REMARKS****I. Introduction**

Claims 1-11 are pending in this application. Claims 1 and 10 have been amended.

Claim 1 has been amended to include the language "first" and "second" before "ground engaging portion" for clarity. Claim 1 has been amended per the Examiner's suggestions to provide clarity. Also, claim 1 has been amended to delete the language "top" and changed to the term "top's longitudinal axis." Support for this amendment is found in the specification at page 3, lines 4-5.

Claim 10 has been amended to provide proper antecedent support. The language "metal is" has been deleted and changed to the term "top and seats are constructed of." Support for the amendment is found in the specification page 6, line 27.

**II. Claim Rejections - 35 U.S.C. § 112, second paragraph**

Claims 1-11 were rejected under U.S.C. § 112, second paragraph, as being indefinite for failure to particularly point out and distinctively claim the subject matter which applicant regards as the invention. The Examiner has indicated that reference to two separate ground engaging portions without distinction is confusing and unclear. Claim 1 has been amended to include the language "first" and "second" before the term "ground engaging portion" to provide clarity. Therefore, in view of the amendments made to claim 1, Applicant believes the claims are allowable under 35 U.S.C. § 112, second paragraph. Accordingly, withdrawal of the formal objection is requested.

Claim 10 was rejected for insufficient antecedent basis. Claim 10 has been amended to delete the term "metal is" and is replaced with the term "top and seats are constructed of."

Therefore, in view of the amendments made to claim 10, Applicant believes that the claim is allowable and should be allowed.

### III. Claim Rejections - 35 U.S.C. § 102(b)

Claims 1, 2, 5 and 11 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Design Patent 190,744 to Guice (hereinafter Guice). The Examiner states that Guice discloses a combined picnic table and seat unit comprising a generally flat horizontal table top having a longitudinal axis, an upper surface, and a lower surface, first and second sides and first and second ends. Furthermore, the picnic table includes bent first and second leg supports wherein each leg support has a ground engaging portion "1" generally transverse to the longitudinal axis of the table and a ground engaging portion "2" generally parallel to the table. Applicant respectfully traverses this rejection. The present invention is clearly distinguished from Guice.

Claim 1 has been amended to clarify that the "second" ground engaging portion is generally parallel to the table top's longitudinal axis. Thus, claim 1 more clearly specifies that the second ground engaging portion of the leg support is generally perpendicular to the first ground engaging support. This limitation encompasses the vision of the present invention of using a non-J-shaped leg support for a more stable wheelchair accessible picnic table.

To render the invention anticipated, the reference must teach or disclose each element of the claimed invention. Guice is a design patent that has a fanciful modification of a J-shaped leg support. Guice does not disclose a second ground engaging support that is generally parallel to the longitudinal axis of the table's surface. As such, the reference does not destroy the novelty of the subject matter of claim 1.

Claims 2-11 depend from claim 1 and should be allowable as depending from an allowable base claim.

#### **IV. Claim Rejections - 35 U.S.C. § 103(a)**

##### **A. Guice**

Claims 3, 4, and 6 - 10 were rejected under U.S.C. § 103(a) as being unpatentable over Guice. As claims 3, 4, and 6 - 10 depend from claim 1, they should be allowable as depending from an allowable base claim.

##### **B. Borglum**

Claims 1-10 were rejected under U.S.C § 103(a) as being unpatentable over U.S. Patent No. 6,11,681 to Borglum (hereinafter Borglum). The Examiner states that Borglum discloses a picnic table that accommodates wheelchairs comprising a generally flat horizontal table top having a longitudinal axis. The Examiner further states the Borglum discloses a bent first and second leg support wherein each leg has a ground engaging portion generally transverse to the longitudinal axis of the table top and an additional attached ground engaging portion generally parallel to the table top. Applicant respectfully traverses the rejection and requests reconsideration of claim 1.

The current invention omits the need of an additional anti-tipping device and yet retains the benefit of being a more stable design. "Omission of an element and retention of its function is an indica of unobviousness." *In re Edge*, 395 F.2d 896, 149 USPQ 556 (CCPA 1965). United States Patent No. 6,116,681 to Borglum discloses a picnic table that incorporates a generally J-shaped leg support (Abstract). To further stabilize the table, Borglum discloses the use of an anti-tipping foot that projects laterally from the J-shaped leg and runs parallel to the longitudinal

axis of the table top (Column 5, lines 27-30). The length of the anti-tipping foot is dependent upon the axial spacing between the strengthening tube and the end of the table top (Column 5, lines 35-37). The anti-tipping foot extends into the area under the table surface in which an individual confined to a wheelchair would attempt to position their wheelchair (Figure 1).

The current invention eliminates the need of an additional anti-tipping foot. The second ground engaging portion of the supporting leg runs parallel to the longitudinal axis of the table top under the seat and terminates in an upward seat support. Because the second ground engaging surface 68, 70, 72, 74 is underneath the seating surface it does not interfere with the handicapped individual's access to the table. Further, because of the nature of the design, the angle of the upright seat support can be modified such that the fulcrum of the bending point can be moved towards the end of the table. The further towards the end of the table the fulcrum is, the greater the stability of the table.

The current invention also teaches away from the use of a J-shaped leg support. Because of the rounded ends of the J-shaped support legs, a picnic table has a tendency to rock, similarly to that of a person stepping into a boat on water, when a person tries to sit on one side of the table. This effect is exacerbated when a group or family all try to sit on one side of the table. To overcome this effect, the current invention uses a surface engaging structure with two perpendicular ground engaging surfaces.

The current inventions' legs create a seat support that is perpendicular to the surface of the ground. With the J-shaped legs, the force is transferred from the weight placed upon the seating surface tangential to the arcuate surface of the bent upright seat support. The tangential force causes the entire structure to attempt to rotate. This rotation can only be offset through application of a force on the other side of the picnic table, or by increasing the weight of the table

such that the tangential force is unable to rotate the table and simply strains the structure of the picnic table support. Both solutions increase the cost of manufacturing and maintenance.

The cited reference does not teach, suggest, or motivate one of ordinary skill in the art to produce a stable wheelchair accessible picnic table that does not utilize traditional J-shaped support legs. In fact, Borglum teaches away from using a support leg that utilizes multiple bends to create two generally perpendicular ground engaging surfaces that provide an upright seat support that can be modified to adjust the fulcrum position. Applicant respectfully requests reconsideration and withdrawal of the objection to claim 1 under U.S.C. § 103(a).

As claims 2-10 depend from claim 1, they should be allowable as depending from an allowable base claim.

**C. Borglum in view of Kovachek**

Claim 11 was rejected under 35 U.S.C. 103(a) as being unpatentable over Borglum in view of U.S. Design Patent No. 416,693 to Kovalchek. As claim 11 depends from claim 1, it should be allowable as depending from an allowable base claim.

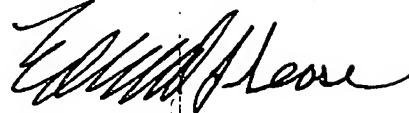
**V. Conclusion**

In light of the arguments and amendments above, Applicant respectfully requests reconsideration of claims 1-11. Allowance is requested.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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